Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. 86-2014

In The

Supreme Court of the United States

October Term, 1986

ROBERT BOWIE JOHNSON, JR.,
Petitioner,

v.

KALMAN R. HETTLEMAN, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Fourth Circuit

PETITIONER'S REPLY BRIEF

Robert Bowie Johnson, Jr.
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QUESTION PRESENTED IN REPLY

Have the avowed efforts of Defendant APWA, an association of 1200 state and local government welfare agencies, "to remove (Plaintiff's) game from the marketplace"[1] contaminated the elective process by depriving the American people of a Constitutionally-protected means of obtaining political information?

ARGUMENT

Defendant Starnes, supervisor of public information operations for the Maryland Welfare Department, stated under oath that Plaintiff's invention was "a game that we feel (the public) would be better off not even knowing about."[2] Plaintiff concedes that the message of the game, even its very title, is an embarrassment to top welfare officials, and the game, it is true, unmercifully ridicules government social policy; but, within our Constitutional system, it is just this kind of ridicule which so effectively exposes the folly and vices of government. No more important information about the conduct of public affairs can be received by the citizens of a democracy than those political opinions which run contrary to the government line. And if the votes of our citizens are to have any meaning, they have a right to receive these political opinions unimpeded by government efforts to suppress their circulation.

Appendix A - "An Open Letter to All APWA Members from Executive Director Edward T. Weaver"

Appendix B - An article by Peter Slavin printed next to the Weaver Letter entitled "Game that Demeans Welfare Clients Arouses Protests But Sells Briskly"

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1. Reference is here made to the last sentence of Defendant APWA's letter to its 9,699 paid subscribers, including more than 1200 member government agencies. Appendix A,
2. Starnes deposition dated March 19th, 1986, P.47 L. 14-15.

Appendix C - the censored notes of Mr. Slavin used in preparation of A and B above

Appendix D - a State of Maryland memo from Defendant Starnes to Defendant Hettleman entitled "Boucher Meeting/Welfare Game" demonstrate that an association of 1200 government agencies put into operation a plan to keep the American electorate from having an opportunity to purchase Plaintiff's anti-liberal political opinion, in the form of a board game, on the American retail market.

Presented with this evidence and more, the lower courts have ruled that the government-conceived and government-directed implementation of this plan to ban a parlor game is Constitutionally protected. Does not this Honorable Court need to take a very detailed look at such lower court decisions which kept this case from going to a jury, and which appear to run so contrary to the grain of American liberty, and to the body of First and Fourteenth Amendment law decided by this Court?

Respectfully submitted,

14 September 1987

Robert Bowie Johnson, Jr.
Petitioner and Plaintiff, *pro se*

APPENDIX A

An Open Letter to All APWA Members from
Executive Director Edward T. Weaver

I am writing this letter to alert you to a new board game entitled, "Public Assistance — Why Bother Working for a Living?" This game is described in the accompanying article.

I agree with Secretary Harris, the NAACP, and the National Organization for Women that the game is callous, racist, sexist, and a "vicious brand of stereotyping." We, who are part of the reality of public welfare, understand the myths that surround the work we do and the people we serve. This game, however, plays out the basest forms of this mythology; we must not let it go unchallenged. I encourage you, as concerned APWA members, to take the following course of action:

1. Do an informal survey to see if the game is being sold in your area. If it is not, keep a watchful eye and initiate the actions in no. 2 below if it appears. You may be able to join with others to contact store owners/managers to discourage buying.
2. If the game is available in your area:
    a. Don't buy it yourself. Let your friends know that it is <u>not</u> a "cute" holiday gift.
    b. Spread the word to other interested groups (welfare rights advocates, civil rights groups, and women's groups).
    c. Either alone or in combination with the groups identified in "b" contact the store owner, manager and/or buyer to explain why the game is offensive and should not be carried.
    d. Keep us informed of your efforts.

As executive director of the American Public Welfare Association, I feel an obligation to you and to the mission we commonly serve to alert you to the "Public Assistance"

game and to suggest the course of action I have outlined. If there are any questions that I, or APWA staff, can answer for you or information that we can share, please do not hesitate to contact us.

We at APWA headquarters will be doing what we can, in conjunction with our Washington colleagues, to remove the game from the marketplace.

. . .from Page 3 of the APWA newsletter, *Washington Report*, dated December, 1980.

APPENDIX B

GAME THAT DEMEANS WELFARE CLIENTS AROUSES PROTESTS BUT SELLS BRISKLY

A new board game that depicts welfare recipients as parasites on society is being sold in stores across the country. Aided by attention from the media, the game, entitled "Public Assistance — Why Bother Working for a Living?" has spread into a number of states in time for the rush of Christmas shoppers.

Players in the Monopoly-like game, whose object is to accumulate money, are dealt cards that either put them on the "able-bodied welfare recipients' promenade" on (sic) in "the working person's rut." The "promenade" is a round of illegitimate children, prostitution, crime, and idleness, capped by collecting welfare checks. By contrast, the "rut" is a gauntlet of bills, bad luck, taxes, and trouble. "Act belligerent at job interview" and "shoplift on the way to welfare office" are typical stops on the "promenade."

"Public Assistance" was on sale for $15.95 in 80 to 100 retail outlets as of mid-November — mostly gift, card, and game shops — in such cities as New York, Chicago, Philadelphia, Milwaukee, Columbus, Baltimore, Washington, Los Angeles, Nashville, and Louisville, according to its creators. Some stores have sold it under the counter. Stores contacted report the game is selling very well.

A number of major department stores have turned the game down (one terming it "offensive") and none are known to be offering it. "A lot signed up in the beginning but kind of shied away because of the controversy," according to one of the game's inventors, Ron Pramschufer.

The game was invented by Pramschufer and another businessman in Maryland; both have an unconcealed aversion to the welfare system. Even before the game

went on sale Nov. 1, a story about it in an Annapolis, Md., newspaper was distributed by the Associated Press and made the front page of papers in Baltimore and Chicago. The two inventors then were invited on the "Today" show with its television audience in the millions.

Patricia Harris, secretary of the Department of Health and Human Services, quickly condemned the game for engaging in "a vicious brand of stereotyping," adding "That stereotype is more than false. It is callous, sexist, and racist."

The National Organization for Women (NOW), which says the game "perpetuates myths" and "totally misrepresents the role of women on welfare," is encouraging its members to take action against the game.

At this writing, there apparently has been little organized opposition, except in Maryland, where the game originated. The state NAACP called for a boycott of stores carrying the game and the ensuing flurry of phone calls and letters caused several Annapolis merchants to drop plans to sell it and may have contributed to the same decision by Hecht's, a chain of large department stores in the state.

Both the Greater Baltimore Committee (the city chamber of commerce) and a representative of the Maryland secretary of human resources have been talking privately with store officials in an effort to keep the game off shelves in Maryland. Like others, they are reluctant to attack the game publicly for fear publicity will promote its message.

. . .from Page 3 of the APWA newsletter, *Washington Report*, dated December, 1980.

APPENDIX C

The Notes of Defendant APWA employee Peter Slavin from November 1980 pertaining to Plaintiff's game*

Nov. 12

1. Broke in mid-October. **(Names and information withheld)**
1. **(Names and information withheld)** in Maryland - tell him want stuff can print
2. Hecht, Hutzler have agreed not to sell **(Names and information withheld)**
3. **(Name withheld)** says Macys, Gimbiels have not yet decided to sell
4. Game - inflammatory, worst kind of prejudice
5. Not unique - 2 years ago got "I Cheat and Steal" for Christmas; portrays politicians as crooks
6. Johnson - had liberal credentials, anti-Vietnam
7. Boycott: on radio broadcast, Johnson admitted it was hurting
8. Originally inventors claimed merely satire, since then coming on stronger
9. APWA - Ed going to write to CEO's of states informing them of game May issue statement later **(Names and information withheld)**

I. **(Names and information withheld)**

Publicity

1. Been lots of publicity **(Names and information withheld)**

* The Fourth Circuit upheld the District Court's ruling that all references to Mr. Slavin's "sources" and information which would lead to the identity of those "sources" could be withheld by Defendant APWA since Mr. Slavin, the editor for Defendant APWA's monthly newsletter, *Washington Report*, was ruled by these courts to be a "newsman" entitled to the protection of the Maryland Shield Law.

2. **(Names and information withheld)**
3. **(Names and information withheld)**
4. People "assumed that if no one said anything the game would just dry up and go away"
5. I disagree. Just controversial nature of game itself will garner publicity "Has already gotten national publicity"
6. "If no one organizes against it. . .the game will be on the shelves during the Xmas season"
7. Disagree that protests will bring publicity (game would not otherwise get)

Harm

1. Game could be very harmful
2. Like early days of Monopoly. "Had major impact on how people viewed business and real estate. Subtle shaping of how people dealt with each other: made them more competitiv (sic)
3. "Millions of people in this country have no conception of public assistance, of how program works"
4. Game will reinforce moves to cut public assistance
5. "Will create backlash toward social service programs as a whole and welfare in particular, unless we point out the inconsistences and stereotypes in game"
6. Inventors - attempting to shape public perception of public assistance
   - they claim game mirrors reality not mere lampooing
   - making political statement with game
7. Sale of 24 for Holt "lends credence to the charge by **(Name withheld)** that game is politically oriented

History

1. First publicity: Annapolis Eve Capital story Oct 7 (picked up by AP) on Holt
2. First sales: at Bullroast fundraiser for conservative US rep Marjorie Holt (A.A. County rep)

3. Sold 24 games in 2 hours
4. Anne Arundel Coalition of Tenants wrote Holt protesting sale
5. She responded in Nov. 12 Eve Cap story that not aware sold, "sincerely regret this occurrence, will look into it at earliest time"

Stores Selling It

1. a) Morton's - Washington chain
   b) 4 stores in Anne Arundel County **(Names and information withheld)**
   c) Toys Are Us - made no decision yet
   d) Macy's, Gimbel's: I'd doublecheck
2. Believe only being sold in Balt-Wash and New York, not rest of country.
   had calls from people who said local stores not carrying it and had no plans to
3. Ask authors what big stores carrying it — remember take with grain of salt
4. How well is it selling? — Don't know. Most stores just got it

Inventors "claimed boycott had been effective, they were making no money because of controversy" — in Nov. 3 interview

Stores Rejecting It

1. Hecht Co. — first major chain to refuse. Said be cause of protest and controversy would have major impact on business during Christmas
2. Hutzler **(Names and information withheld)** some influential people approached store and they agreed not to sell **(Names and information withheld)** — names printed in paper
3. Six Annapolis stores - they had told reporter planned to sell it starting Nov
   They got 30-50 calls all critical of game.

Organized Opposition

1. Don't know if any state against game beside Maryland
2. Maryland NAACP spearheaded opposition originally - asked firms in Maryland not to carry game at press conf Got Hecht not to carry by writing president; Hecht game (sic) them credit according to np account
3. National NAACP - Maryland chapter asked to support local efforts, write stores
   by NAACP
4. Oct. 10 — boycott appeal made to 100 people (civil rights and welfare advocates) at welfare advocates conference
5. Oct 13 np — inventors issued statement protesting call for boycott
6. Local campaign has resulted in letters to editor every day in paper
7. Had result of stopping Hecht and half dozen Annapolis stores

(Names and information withheld)

Inventors

1. Johnson was on welfare after Vietnam **(Names and information withheld)** At least 6 people. **(Names and information withheld)** he said, Yes, but I was doing research

Positive he was on food stamps, possible AFDC too

2. They are openly right wing, admit it

Outlook

1. "Depends on what public does. If large organized outcry against game, by beginning of 1981 it will be obvious game flopped. On the other hand, if nothing done, the owners could make quite a bit of money off it."
2. Yes, good chance of organized opposition being successful
3. Opponents need to contract (sic) stores directly, bring economic pressure

APPENDIX D

DEPARTMENT OF HUMAN RESOURCES

STATE OF MARYLAND 1100 NORTH EUTAW STREET BALTIMORE, MARYLAND 21201

OFFICE OF THE SECRETARY TELEPHONE:

TO: Buzzy Hettleman DATE: 11/24/80
FROM: Luther Starnes
RE: Boucher Meeting/Welfare Game

This will summarize my various conversations, contacts, etc. on the Welfare Game.

- I have advised you previously of my contacts with Hutzlers and Hechts and their decision not to offer the game.

- I have had two conversations with Peter Slavin, APWA, who is writing an article for its publication.

- I have talked to Carl Snowden and advised him of our interest and efforts. We agreed to keep each other advised.

- I have tried to reach Bob Cheeks, without success. I learned from Allan Capute, Bill Boucher's assistant that Bob is following the matter and would like to puruse some legal recourse. He has kept still publically, however, not wanting to publicize the game.

- I discussed the issue with Bill Liebovici who was unaware of it. He looked into it and called back to say that he could find no consumer protection issue in it.

- Allan Capute, for Bill, has done extensive work on this and whatever the outcome, should be commended for it. He has tried to survey

every game outlet in the Baltimore area, and has talked to managers in the few he has found carrying it.

He found it nowhere in Baltimore, though he has recently been told it is in "What's Your Game" at Harbor Place. He did find it at the Pasadena Super Thrift (not a grocery store), Port Track Ltd., and The Artist's Flat — all in the Anne Arundel county area.

Allan sent me a copy of the game, which is attached.

Attachment

KALMAN R. HETTLEMAN
Secretary

HARRY HUGHES
Governor

BILL B. BENTON
Deputy Secretary